

1 A No, it is not.

2 Q And, in fact, as the Judge said,  
3 you can go down the street here and probably  
4 buy a CIA hat or an FBI hat and probably buy  
5 an Osama bin Laden hat for all I know.

6 JUDGE SIPPEL: Strike that. But  
7 the other two I know for a fact.

8 BY MR. LYON:

9 Q Do you think people who buy those  
10 hats are trying to impersonate federal agents?

11 A I do not.

12 Q Mr. Titus wasn't wearing that hat  
13 when he was in the bathroom, was he --

14 A No.

15 Q -- to your knowledge?

16 A To my knowledge, he was not.

17 Q To your knowledge, he's never worn  
18 that hat?

19 A I have no idea whether he's worn  
20 it or not.

21 Q Okay. Now, in your e-mail to Ms.  
22 Keller, you also said that this clown was

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1 caught with a KEL-Light?

2 A Well, I didn't use that term but  
3 more than one time.

4 Q That term being clown or KEL-  
5 Light?

6 A Clown.

7 JUDGE SIPPEL: Did that come in  
8 evidence, by the way, that you're referring to  
9 --

10 MR. LYON: No, it's not, your  
11 Honor. I can put it in evidence as soon as I  
12 find it.

13 JUDGE SIPPEL: All right. Well,  
14 that's all right. Keep going. I don't want  
15 to stop you now, but I do want to put that in  
16 evidence.

17 MR. LYON: All right.

18 BY MR. LYON:

19 Q Just to be accurate, the light  
20 actually wasn't a KEL-Light, it was a Mag-  
21 light, wasn't it? I'm sorry. Strike that.

22 JUDGE SIPPEL: I can tell you

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1 exactly what it was.

2 BY MR. LYON:

3 Q Officer Franklin called it a  
4 Maglite, right?

5 JUDGE SIPPEL: It was a Stream  
6 Light X20.

7 MR. LYON: But I think Officer  
8 Franklin might have called it a Maglite.

9 BY MR. LYON:

10 Q The fact is that Mr. Titus was not  
11 caught with the flashlight in the bathroom,  
12 was he?

13 A Not that I know of, no.

14 Q And, in fact, he wasn't caught  
15 with it at all. It was in his vehicle.

16 A That's correct, as far as I know.

17 Q Do you think it is a good idea for  
18 a motorist to have a flashlight in his or her  
19 vehicle?

20 A I think it makes perfectly good  
21 sense.

22 Q Do you have a problem that Mr.

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1 Titus had a Stream Light? Is that something  
2 that concerns you? Or that type of light,  
3 whatever it is. Do you know what a Stream  
4 Light is?

5 A I do. I own one. It's my police  
6 flashlight.

7 Q Okay. And do you have a problem  
8 that Mr. Titus had a Stream Light?

9 A Once again, anybody can go into a  
10 uniform store and buy a Stream Light, as well  
11 as buying a police hat, as well as, you know,  
12 buying a number of things. However, in  
13 considering the totality of the circumstances  
14 and when you have a person whose crimes are of  
15 power and control and they are buying symbols  
16 of power and control, you are concerned. And  
17 my experience has shown me that those type of  
18 things should be a concern.

19 Q Do you think anybody ever told Mr.  
20 Titus in his sex offender treatment that you  
21 shouldn't have a Stream Light because someone  
22 might mistake you as a police officer?

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1           A     I don't know whether they told him  
2     that or not.

3           Q     Do you think they did?

4           A     Well, I have no idea.

5           Q     Okay.       Isn't the principal  
6     difference between a Stream Light or a KEL-  
7     Light or a Maglite and your typical hardware  
8     store light that the Stream Light type light  
9     is more durable?

10          A     They're usually made out of  
11     aluminum or steel, and they tend to be far  
12     brighter than your typical flashlight you  
13     would buy in a hardware store.

14          Q     And a typical flashlight that you  
15     would buy in a hardware store has a reputation  
16     for breaking if you drop it, doesn't it?

17          A     I don't know if that's the  
18     reputation of those kind of flashlights or  
19     not.

20          Q     They're certainly less durable  
21     than a Maglite or a Stream Light or a KEL-  
22     Light?

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1           A     I don't know that I would be able  
2     to say that. I can tell you that the police  
3     flashlights are pretty durable because they  
4     get a lot of hard use. As far as hardware  
5     store flashlights, I don't know. I've got  
6     flashlights that I got at hardware stores that  
7     are working for years afterwards. So I don't  
8     know, you know, what the reputation would be  
9     of a hardware store flashlight.

10          Q     Okay. It's certainly not against  
11     the law to carry a Maglite or a Stream Light  
12     or a KEL-Light?

13          A     No, I said that previously.

14          Q     And can you identify this  
15     flashlight?

16          A     Surefire 6P.

17          Q     Okay. Are you familiar with that  
18     flashlight?

19          A     I'm not.

20          Q     Okay. In your experience, do some  
21     officers carry a light similar to this?

22          A     I've seen lights similar to that,

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1       yes.

2                   JUDGE SIPPEL: Could you describe  
3       it in terms of size for the record?

4                   MR. LYON: Sure. The record will  
5       reflect that this is a Surefire 6P flashlight.  
6       It is quite bright, and it's quite durable.

7                   JUDGE SIPPEL: How long is it?

8                   MR. LYON: It's about four inches  
9       long, I guess.

10                  MS. LANCASTER: And how wide is  
11       it?

12                  MR. LYON: It's about one-inch  
13       wide.

14                  BY MR. LYON:

15                  Q     Detective Shilling, I own several  
16       of these, and does that make you think that  
17       I'm looking for power and control by owning  
18       this?

19                  A     No.

20                  Q     Even though some officers use  
21       lights such as this?

22                  JUDGE SIPPEL: Now, this line of

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1 questioning is totally irrelevant. He said,  
2 his premise was that the crimes, whether you  
3 want to call them adjudications or whatever,  
4 that Mr. Titus has been convicted of have to  
5 do, are related to power and control, and  
6 that's his assumption. And then this is  
7 paraphernalia he feels are an expression of  
8 that power and control. So that's stay to  
9 that.

10 MR. LYON: Okay. I'll move on,  
11 your Honor.

12 BY MR. LYON:

13 Q The fact is that Mr. Titus didn't  
14 have his flashlight in the bathroom with him,  
15 right?

16 A I have no information that he had  
17 his flashlight in the bathroom with him.

18 Q And, in fact, the information you  
19 had was that it was found in his vehicle,  
20 right?

21 A Yes.

22 Q Now, Mr. Titus did have a necklace

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1 on him. Have you seen the necklace in  
2 question?

3 A I haven't seen the necklace in  
4 question. I have seen those necklaces,  
5 though, and the badges.

6 Q Okay. And the medallion on the  
7 necklace is about the size of a nickel, isn't  
8 it?

9 A Yes.

10 Q Now, Mr. Titus was not arrested in  
11 connection with the events of Mercer Island?

12 A No, he was not.

13 Q He wasn't charged with anything?

14 A No.

15 Q And there were no minors even  
16 present at Mercer Island, right?

17 A No, there were not.

18 Q And, in fact, it was three in the  
19 morning, correct?

20 A Yes, it was.

21 Q And you wouldn't expect to find  
22 minors present in a park at three in the

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1 morning, would you?

2 A No, you would not.

3 Q After being advised of the Mercer  
4 Island matter, you re-evaluated Mr. Titus sex  
5 offender level, correct?

6 A Yes.

7 Q Okay. And do you recall receiving  
8 a subpoena from me?

9 A I do.

10 Q And that asked for all your  
11 evaluations of Mr. Titus?

12 A Yes.

13 Q Okay. In response to that, you  
14 gave me an evaluation dated 2/26/08, and I'm  
15 showing the witness a document which is called  
16 Washington State Sex Offender Risk Level  
17 Classification revised 1990. It is a four-  
18 page document.

19 A Yes.

20 Q And is that the evaluation that  
21 you gave me?

22 A It is.

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1 Q Did you give me any other  
2 evaluations?

3 A No.

4 Q Why not?

5 A Because there hadn't been any  
6 done.

7 Q But I thought you re-evaluated Mr.  
8 Titus after Mercer Island.

9 A I did.

10 Q You didn't do it on paper?

11 A No.

12 Q You did it in your head?

13 A Yes.

14 Q Now, page -- excuse me for one  
15 second. At page six of your prepared  
16 testimony --

17 JUDGE SIPPEL: That's Exhibit 2?

18 MR. LYON: I'm sorry, yes.

19 BY MR. LYON:

20 Q EB Exhibit 2, page six, line 21  
21 through 23, you say, do you not, "After the  
22 End of Sentence Review Committee assesses a

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1 sex offenders risk of re-offense, a local law  
2 enforcement agency may change the sex  
3 offender's ranking only after justifying such  
4 modification in writing." Did you justify Mr.  
5 Titus' change in level in writing?

6 A I did not.

7 MR. KNOWLES-KELLETT: I ask, your  
8 Honor, that he be given an opportunity to  
9 explain his answer.

10 JUDGE SIPPEL: Wait, wait, wait,  
11 wait. That's not the way cross examination  
12 works. Go ahead.

13 MR. KNOWLES-KELLETT: The question  
14 was misleading, though, your Honor.  
15 Objection, misleading. There's no foundation  
16 that the End of Sentence Review Committee had,  
17 at any point, evaluated Mr. Titus.

18 JUDGE SIPPEL: That wasn't his  
19 question.

20 MR. KNOWLES-KELLETT: The premise  
21 of the question was after the End of Sentence  
22 Review Committee evaluates somebody, you can

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1       only depart in writing. The End of Sentence  
2       Review Committee has never evaluated Mr.  
3       Titus, as my understanding of his testimony.  
4       And if I'm wrong, Detective Shilling could  
5       explain it.

6               MR. LYON: Well, your Honor, I  
7       guess if that's the case, I have no idea why  
8       this sentence has been included in the report  
9       or in this witness' testimony because it  
10      certainly implied to me, and I must confess  
11      that before this hearing I was under the  
12      impression that the End of Sentence Review  
13      Committee had addressed Mr. Titus' sex  
14      offender level. But in any event --

15             JUDGE SIPPEL: What is the  
16      sentence again? Where are you --

17             MR. LYON: It says, "After the End  
18      of Sentence Review Committee assesses a sex  
19      offender's risk of re-offense, a local law  
20      enforcement agency may change the sex  
21      offender's ranking only after justifying such  
22      modification in writing." All I asked was did

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1 the witness justify in writing his change of  
2 Mr. Titus from a level two or a level three.  
3 I guess I will stipulate, if counsel wishes,  
4 that the End of Sentence Review Committee  
5 apparently didn't do it, did not ever assess  
6 him. But I'd like to go ahead and move on to  
7 my next question.

8 JUDGE SIPPEL: Go ahead.

9 BY MR. LYON:

10 Q Doesn't this statement of yours --

11 JUDGE SIPPEL: I'm overruling the  
12 objection by the way. I'm sorry. Go ahead.

13 BY MR. LYON:

14 Q Doesn't this statement of yours on  
15 page six indicate, at the very least, a  
16 standard procedure that re-evaluation of a sex  
17 offender should be supported by written  
18 documentation?

19 A Well, first of all, Mr. Titus, his  
20 case had never been before the End of Sentence  
21 Review Committee. Having sat on the End of  
22 Sentence Review Committee, I know all of the

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1 things that make up the risk assessment, and  
2 there was no question in my mind that Mr.  
3 Titus would, in fact, have been a level three  
4 under the WASOST. And as it turns out, I was  
5 right.

6 Q So you didn't think it was  
7 important to justify your re-evaluation in  
8 writing? Yes? No?

9 A I probably should have put it in  
10 writing just for completeness of the record.

11 JUDGE SIPPEL: Well, let me just  
12 ask this question this way then: was your  
13 failure to put it in writing inconsistent with  
14 the regulatory procedures for assessing for  
15 ranking sex offenders? I'm talking about  
16 procedures.

17 THE WITNESS: If, in fact, Mr.  
18 Titus had been reviewed by the End of Sentence  
19 Review Committee, then I am required by law to  
20 complete a notice notifying the End of  
21 Sentence Review Committee that Mr. Titus has  
22 been aggravated to a higher level or even

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1 mitigated to a lower level. The fact that Mr.  
2 Titus was not seen by the End of Sentence  
3 Review Committee, there is no requirement that  
4 anything be in writing regarding his risk  
5 level.

6 JUDGE SIPPEL: So under the  
7 procedures of the Washington Police Department  
8 that you're operating under at that time,  
9 assuming that you had what, you know, you felt  
10 was just cause, but you could on your own  
11 reassess him up or down without putting it in  
12 writing?

13 THE WITNESS: That's correct, your  
14 Honor.

15 JUDGE SIPPEL: All right.

16 BY THE WITNESS:

17 Q Now, just a few more questions  
18 regarding Mercer Island. At page 41 of  
19 Enforcement Bureau Exhibit 4, there's a  
20 reference to the fact that one of the officers  
21 found a bottle of lotion in the bathroom,  
22 correct?

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1 A Yes.

2 Q Okay. There's nothing in the  
3 report to tie Mr. Titus to that lotion,  
4 correct?

5 A I don't recall there was.

6 JUDGE SIPPEL: Where is this  
7 statement that you're referring to in this  
8 report?

9 THE WITNESS: It's in the very  
10 last paragraph, your Honor.

11 JUDGE SIPPEL: Well, I'm looking  
12 at something that says lotion here.

13 THE WITNESS: It's the third line  
14 in the last page.

15 JUDGE SIPPEL: I have it, I have  
16 it, yes. He was found by Mercer Island Police  
17 in a darkened park bathroom with a bottle of  
18 lotion at 3 a.m.

19 BY MR. LYON:

20 Q Now, the fact is that the officer  
21 reported that that lotion was found in the  
22 corner of the bathroom, correct?

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1           A       I'm not sure. The discussion that  
2       I had with the officer was exactly as it's  
3       written here.

4           Q       If you could turn to page 39 of  
5       Enforcement Bureau Exhibit 4, in the first  
6       paragraph about midway down, and,  
7       unfortunately, I'm not as organized as Ms.  
8       Lancaster and I haven't numbered this, but it  
9       looks like two, four, six --

10          A       I see.

11          Q       -- eight lines, lines eight and  
12       nine, Officer Franklin says that, "I observed  
13       no damage to the interior of the restroom,  
14       just a plastic container of Neutrogena lotion  
15       in the corner of the restroom." But you're  
16       saying that when you spoke to the officer, you  
17       were told that Mr. Titus was caught with it?

18          A       He said that Mr. Titus had it.

19          Q       Okay. So, in fact, what the  
20       officer told you is inconsistent with what the  
21       officer said in the report; isn't that true?

22          A       Well, he said that the lotion was

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1 in the corner of the restroom. He told me  
2 that Mr. Titus had the lotion.

3 Q Okay. But if it's in the corner  
4 of the restroom then doesn't it stand to  
5 reason that it wasn't in the possession of Mr.  
6 Titus?

7 A Well, not necessarily. I mean, he  
8 could have tossed it there when he saw the  
9 police coming or anything. I mean, I don't --

10 Q But that's just speculation, isn't  
11 it?

12 A That's speculation, yes.

13 MR. KNOWLES-KELLETT: Your Honor,  
14 what are we going to do about lunch?

15 JUDGE SIPPEL: We're going to eat  
16 lunch.

17 MR. KNOWLES-KELLETT: It's a  
18 little after noon. I'm wondering what time  
19 we're --

20 MR. LYON: I am getting close to  
21 being done, if I could have your indulgence  
22 for a few more minutes.

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1 MR. KNOWLES-KELLETT: Okay. I'm  
2 going to have a little bit with this witness.

3 MR. LYON: I understand that.

4 BY MR. LYON:

5 Q Let's talk a little bit about the  
6 RRASOR. This is Karl Hansen's actuarial  
7 procedure for predicting sex offender  
8 recidivism, correct?

9 A Yes, one of them.

10 Q And it considers only four  
11 factors, right?

12 A Where was that in the --

13 Q I'll be happy, if it will help  
14 you, I'll give you the --

15 A Yes.

16 Q I'll give you the document I  
17 showed you before, which is the assessment you  
18 did on 2/26/08, or at least it stated that.

19 A Yes.

20 Q The RRASOR considers only four  
21 factors, right?

22 A That's correct.

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1 Q It considers number of prior sex  
2 offenses?

3 A Right.

4 Q It considers the offender's age at  
5 the time of release?

6 A Yes.

7 Q Okay. Not the time of evaluation?

8 A That's right.

9 Q Okay. And it considers a gender  
10 of the offender's previous victim?

11 A That's correct.

12 Q That is, being a female victim  
13 doesn't rate but being a male victim rates, I  
14 guess, as a point.

15 A Well, yes.

16 Q All right. And it considers  
17 whether the offender had a familial  
18 relationship with his previous victims?

19 A That's correct.

20 JUDGE SIPPEL: What page are you  
21 on? I'm sorry. You're on a page of his  
22 testimony?

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1 MR. LYON: No. We're on his  
2 assessment of Mr. Titus, which is not in  
3 evidence.

4 JUDGE SIPPEL: Okay, go ahead.  
5 I'm sorry.

6 MR. LYON: It's a document that  
7 was provided to me pursuant to the subpoena  
8 that we issued.

9 BY MR. LYON:

10 Q Now, Mr. Hansen has admitted that  
11 the RRASOR was not intended to provide a  
12 comprehensive assessment of all the factors  
13 relevant to the prediction of sexual offender  
14 recidivism?

15 A I don't think there's any risk  
16 assessment that is designed to do that.

17 Q Instead, the intent of the RRASOR,  
18 is it not, is to be used to screen offenders  
19 into relative risk levels?

20 A Yes.

21 Q It's a screening tool?

22 A That's correct.

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1 Q And then the risk levels could  
2 then be adjusted by consideration of other  
3 relevant factors?

4 A That's correct.

5 Q All right.

6 MR. LYON: If I could have a  
7 minute, your Honor, I think I can exclude some  
8 of what I had prepared earlier.

9 JUDGE SIPPEL: Do you need to go  
10 off the record, or do you want to --

11 MR. LYON: I think I can do it in  
12 about 20 seconds.

13 BY MR. LYON:

14 Q One of the factors that Hansen  
15 suggests should be considered is treatment  
16 compliance; is that correct?

17 A In the RRASOR?

18 Q Yes.

19 A No.

20 Q Let me rephrase that. Hansen has  
21 suggested, has he not, that the RRASOR should  
22 be used as a screening tool and then the

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1 evaluation should consider other relevant  
2 factors?

3 A The RRASOR is just one of many  
4 screening tools for sex offender recidivism.

5 Q And Hansen has suggested that  
6 other factors should also be considered,  
7 correct?

8 A Yes, he has.

9 Q One of which is treatment  
10 compliance?

11 A He has said that in the past.  
12 There's some question as to its relevance now.

13 Q And that is, in fact, my question.  
14 In Hansen's 1998 meta analysis, the only  
15 factor related to recidivism was whether the  
16 offender completed the course of treatment,  
17 correct, in respect to treatment compliance?

18 A I haven't read his meta analysis,  
19 so I can't answer that.

20 Q Okay. It's true, is it not, that  
21 the RRASOR lacks a manual? Divorced from the  
22 WASOST, the RRASOR itself doesn't have a

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1 manual?

2 A You know, I'm not sure if it does  
3 or not.

4 Q Okay. Well, we'll move on. I  
5 think you testified earlier that the  
6 Washington State Institute for Public Policy  
7 has done various studies relating to sex  
8 offenders?

9 A Yes.

10 Q Okay. And in 2004, the Washington  
11 legislature directed the WSIPP to conduct a  
12 comprehensive analysis of the effectiveness of  
13 the state sex offender policies?

14 A The state sex offender policies or  
15 the Sex Offender Treatment Program?

16 Q I'll accept treatment program.

17 A Yes.

18 Q Okay. And as part of that  
19 comprehensive analysis, WSIPP studied the End  
20 of Sentence Review Committee's sex offender  
21 notification procedures?

22 A Yes.

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1 Q Okay. And you were aware of the  
2 results of that study?

3 A Well, there was a couple of  
4 studies done.

5 Q I stand corrected. I'm aware of  
6 two studies.

7 A Right.

8 Q Would that be correct?

9 A Yes.

10 Q In a January 2006 report, WSIPP  
11 made the following key finding that the  
12 notification consideration score has little or  
13 not accuracy in predicting sex offender  
14 recidivism; is that correct?

15 A Yes.

16 Q And in that same report, WSIPP  
17 made the additional key finding that the risk  
18 assessment score has little or no accuracy in  
19 predicting sex offender recidivism, although  
20 some elements had moderate predictive  
21 accuracy?

22 A That's what they said, yes.

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